The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Reapportionment Committee

BILL:	CS/SB 1174
INTRODUCER:	Committee on Reapportionment
SUBJECT:	Establishing Congressional Districts of the State
DATE:	January 11, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bardos	Guthrie	RE	**Fav/CS**
2.				
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

As required by state and federal law, the committee substitute apportions Florida into congressional districts.

This committee substitute substantially amends Chapter 8 of the Florida Statutes.

II. Present Situation:

The United States Constitution requires the Legislature periodically to reapportion the state into congressional districts.[1] Florida currently is apportioned into 25 single-member congressional districts.[2]

The 2010 Census revealed uneven population growth across the state during the last 10 years. Districts must be adjusted to correct population differences. Based on the 2010 Census, Florida was apportioned two additional congressional districts, increasing its representation to 27. The

[1] *See* U.S. Const. Amend. XIV; *Wesberry v. Sanders*, 376 U.S. 1 (1964).
[2] Fla. HB 1993 (2002).

ideal population of each of the 27 congressional districts in Florida is 696,345. Currently, the congressional district with the largest population has 929,533 persons (233,188 more than the ideal), and the congressional district with the smallest population has 633,889 persons (62,456 less than the ideal).

Redistricting plans must comply with all requirements of the United States Constitution, the federal Voting Rights Act of 1965, the Florida Constitution, and applicable court decisions.

The United States Constitution

The United States Supreme Court has interpreted Article I, Section 2 of the United States Constitution to require that congressional districts be as nearly equal in population as practicable.[3] In the creation of congressional districts, the so-called "one person, one vote" requires the Legislature to make a good-faith effort to achieve precise mathematical equality.[4] The Constitution permits population variances that are (1) unavoidable despite a good-faith effort to achieve absolute equality; or (2) necessary to achieve a legitimate goal.[5] In the case of congressional districts, however, the Court has allowed no *de minimis* population variances.[6]

The Equal Protection Clause limits the influence of race in redistricting. If race is the predominant factor in redistricting, such that traditional, race-neutral redistricting principles are subordinated to considerations of race, the redistricting plan will be subject to strict scrutiny.[7] To satisfy strict scrutiny, the use of race as a predominant factor must be narrowly tailored to achieve a compelling interest.[8] The United States Supreme Court has held that the interest of the state in remedying the effects of identified racial discrimination may be compelling,[9] and it has assumed, but has not decided, that compliance with the requirements of the federal Voting Rights Act likewise justifies the use of race as a predominant factor in redistricting.[10]

The United States Supreme Court has construed the Equal Protection Clause to prohibit political gerrymanders,[11] but it has not identified judicially discernible and manageable standards by which such claims are to be resolved.[12] Political gerrymandering cases, therefore, remain sparse.

The Federal Voting Rights Act

In some circumstances, Section 2 of the federal Voting Rights Act requires the creation of a district that performs for minority voters. Section 2 requires, as necessary preconditions, that

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[3] *Wesberry*, 376 U.S. 1.
[4] *Karcher v. Daggett*, 462 U.S. 725, 730 (1983).
[5] *Id*. at 730-31.
[6] *Id*. at 734.
[7] *Miller v. Johnson*, 515 U.S. 900, 916 (1995).
[8] *Id*. at 920.
[9] *Shaw v. Hunt*, 517 U.S. 899, 909 (1996).
[10] *Id*. at 915; *Bush v. Vera*, 517 U.S. 952, 982-83 (1996) (plurality opinion).
[11] *Davis v. Bandemer*, 478 U.S. 109 (1986). The term "political gerrymander" has been defined as "the practice of dividing a geographical area into electoral districts, often of highly irregular shape, to give one political party an unfair advantage by diluting the opposition's voting strength." *Vieth v. Jubelirer*, 541 U.S. 267, 272 n.1 (2004) (plurality opinion) (quoting Black's Law Dictionary 696 (7th ed. 1999)).
[12] *Davis*, 478 U.S. at 123; *Vieth*, 541 U.S. at 281.

(1) the minority group be sufficiently large and geographically compact to constitute a numerical majority in a single-member district; (2) the minority group be politically cohesive; and (3) the majority vote sufficiently as a bloc to enable it usually to defeat the candidate preferred by the minority group.[13] If each of these preconditions is established, Section 2 will require the creation of a performing minority district if, based on the totality of the circumstances, it is demonstrated that members of the minority group have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.[14]

Section 5 of the Voting Rights Act protects the electoral opportunities of minority voters in covered jurisdictions from retrogression, or backsliding.[15] In Florida, Section 5 covers five counties: Collier, Hardee, Hendry, Hillsborough, and Monroe.[16] Section 5 requires that, before its implementation in a covered jurisdiction, any change in electoral practices (including the enactment of a new redistricting plan) be submitted to the United States Department of Justice or to the federal District Court for the District of Columbia for review and preclearance.[17] A change in electoral practices is entitled to preclearance if, with respect to minority voters in the covered jurisdictions, the change has neither a discriminatory purpose nor diminishes the ability of any citizens on account of race or color to elect their preferred candidates.[18]

The Florida Constitution

In 2010, voters amended the Florida Constitution to create standards for establishing congressional district boundaries.[19] The new standards are set forth in two tiers. To the extent that compliance with second-tier standards conflicts with compliance with first-tier standards, the second-tier standards do not apply.[20] The order in which the standards are set forth within either tier does not establish any priority of one standard over another within the same tier.[21]

The first tier provides that no apportionment plan or district shall be drawn with the intent to favor or disfavor a political party or an incumbent.[22] Redistricting decisions unconnected with an

[13] *Thornburg v. Gingles*, 478 U.S. 30, 50-51 (1986); *Bartlett v. Strickland*, 556 U.S. 1 (2009) (plurality opinion).
[14] 42 U.S.C. § 1973(b).
[15] 42 U.S.C. § 1973c.
[16] 28 C.F.R. pt. 51 app.
[17] 42 U.S.C. § 1973c(a).
[18] 42 U.S.C. § 1973c(b), (c). Apart from the Voting Rights Act, federal law directs that congressional districts be single-member districts. 2 U.S.C. § 2c. Congress enacted this requirement pursuant to its authority to regulate the times, places, and manner of holding congressional elections. *See* U.S. Const. Art. I, § 4, cl. 1.
[19] Art. III, § 20, Fla. Const. Before the adoption of the amendment, the Florida Constitution did not regulate congressional redistricting. Two members of Congress have challenged the constitutionality of the new standards in federal court. They allege that, because the new standards purport to regulate congressional elections, its method of enactment violates Article I, Section 4 of the United States Constitution. The plaintiffs were unsuccessful in the district court but have appealed to the Eleventh Circuit. *See Brown v. Browning*, No. 1:10-cv-23968-UU, slip op. (S.D. Fla. Sep. 9, 2011), *appeal docketed*, No. 11-14554 (11th Cir. Oct. 3, 2011).
[20] Art. III, § 20(c), Fla. Const.
[21] *Id*.
[22] Art. III, § 20(a), Fla. Const. The statutes and constitutions of several states contain similar prohibitions. *See*, *e.g.*, Cal. Const. Art. XXI, § 2(e); Del. Const. Art. II, § 2A; Haw. Const. Art. IV, § 6; Wash. Const. Art. II, § 43(5); Iowa Code § 42.4(5); Mont. Code Ann. § 5-1-115(3); Or. Rev. Stat. § 188.010(2); Wash. Rev. Code § 44-05-090(5). These standards have been the subject of little litigation. In *Hartung v. Bradbury*, 33 P.3d 972, 987 (Or. 2001), the court held that "the mere fact that a particular reapportionment may result in a shift in political control of some legislative districts (assuming that every registered voter votes along party lines)," does not show that a redistricting plan was drawn with an improper intent.

intent to favor or disfavor a political party and incumbent do not violate this provision of the Florida Constitution, even if their effect is to favor or disfavor a political party or incumbent.[23]

The first tier of the new standards also provides two distinct protections for racial and language minorities. First, districts may not be drawn with the intent or result of denying or abridging the equal opportunity of minorities to participate in the political process. Second, districts may not be drawn to diminish the ability of racial or language minorities to elect representatives of their choice.[24] The second standard is comparable in its text to Section 5 of the federal Voting Rights Act, as amended in 2006, but is not limited to the five counties protected by Section 5.[25]

On March 29, 2011, the Florida Legislature submitted the new standards to the United States Department of Justice for preclearance. In the submission, the Legislature took the position that the two protections for racial and language minorities collectively ensure that the Legislature's traditional power to maintain and even increase minority voting opportunities is not impaired or diminished by other, potentially conflicting standards in the constitutional amendment, and that the Legislature may continue to employ, without change, the same methods to preserve and enhance minority representation as it has employed with so much success in recent decades.[26] Without comment, the Department of Justice granted preclearance on May 31, 2011.[27]

The first tier also requires that districts consist of contiguous territory.[28] In the context of state legislative districts, the Florida Supreme Court has held that a district is contiguous if no part of the district is isolated from the rest of the district by another district.[29] In a contiguous district, a person can travel from any point within the district to any other point without departing from the district.[30] A district is not contiguous if its parts touch only at a common corner, such as a right angle.[31] The Court has also concluded that the presence in a district of a body of water without a connecting bridge, even if it requires land travel outside the district in order to reach other parts of the district, does not violate contiguity.[32]

The second tier of standards requires that districts be compact.[33] The various measures of compactness that courts in other states have utilized include mathematical calculations that

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[23] It is well recognized that political *consequences* are inseparable from the redistricting process. *See*, *e.g.*, *Vieth v. Jubelirer*, 541 U.S. 267, 343 (2004) (Souter, J., dissenting) ("The choice to draw a district line one way, not another, always carries some consequence for politics, save in a mythical State with voters of every political identity distributed in an absolutely gray uniformity.").

[24] Art. III, § 20(a), Fla. Const.

[25] *Compare id*. *with* 42 U.S.C. § 1973c(b).

[26] Letter from Andy Bardos, Special Counsel to the Senate President, and George Levesque, General Counsel to the Florida House of Representatives, to T. Christian Herren, Jr., Chief of the Voting Section, Civil Rights Division, United States Department of Justice (Mar. 29, 2011) (on file with the Senate Committee on Reapportionment).

[27] Letter from T. Christian Herren, Jr., Chief of the Voting Section, Civil Rights Division, United States Department of Justice, to Andy Bardos, Special Counsel to the Senate President, and George Levesque, General Counsel to the Florida House of Representatives (May 31, 2011) (on file with the Senate Committee on Reapportionment).

[28] Art. III, § 20(a), Fla. Const.

[29] *In re Senate Joint Resolution 2G, Special Apportionment Session 1992*, 597 So. 2d 276, 279 (Fla. 1992) (citing *In re Apportionment Law, Senate Joint Resolution 1E*, 414 So. 2d 1040, 1051 (Fla. 1982))

[30] *Id*.

[31] *Id*. (citing *In re Apportionment Law, Senate Joint Resolution 1E*, 414 So. 2d at 1051)

[32] *Id*. at 280.

[33] Art. III, § 20(b), Fla. Const.

compare districts according to their areas, perimeters, and other geometric criteria,[34] and broader considerations of how actual communities relate to one another to form effective representational units.[35] Geometric compactness considers the shapes of particular districts and the closeness of the territory of each district, while functional compactness looks to commerce, transportation, communication, and other practical measures that unite communities, facilitate access to elected officials, and promote the integrity and cohesiveness of districts for representational purposes.

Whether explicitly or implicitly, courts in most states appear to balance considerations of geometric and functional compactness. Courts recognize that perfect geometric compactness, which consists of circles or regular simple polygons, is impracticable and not required.[36] Thus, in assessing whether the legislature has achieved a reasonable degree of compactness, courts in different jurisdictions have considered combinations of the following criteria:

- Whether the shape of the district is regular or irregular.[37]
- Whether the territory of the district is closely united.[38]
- Whether constituents in the district are able to relate to and interact with one another.[39]
- Whether constituents in the district are able to access and communicate with their elected officials.[40]
- Whether the district is interconnected through commerce, transportation, and communication.[41]
- Whether the shape of the district is affected by the physical boundaries of the state.[42]
- Whether the shape of the district is affected by a good-faith consideration and balancing of other legal requirements of equal importance.[43]

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[34] *See, e.g.*, *Hickel v. Southeast Conference*, 846 P.2d 38, 45 (Alaska 1992); *In re Reapportionment of Colo. Gen. Assembly*, 647 P.2d 209, 211 (Colo. 1982); *In re Apportionment of State Legislature–1982*, 321 N.W.2d 565, 580 (Mich. 1982).
[35] *See, e.g.*, *Wilson v. Eu*, 823 P.2d 545, 553 (Cal. 1992); *Opinion to the Governor*, 221 A.2d 799, 802-03 (R.I. 1966); *In re Reapportionment of Towns of Hartland, Windsor & W. Windsor*, 624 A.2d 323, 330 (Vt. 1993).
[36] *See, e.g.*, *Matter of Legislative Districting of State*, 475 A.2d 428, 437, 443-44 (Md. 1984); *Preisler v. Kirkpatrick*, 528 S.W.2d 422, 426 (Mo. 1975).
[37] *See, e.g.*, *Hickel*, 846 P.2d at 45; *Ariz. Minority Coalition for Fair Redistricting v. Ariz. Indep. Redistricting Comm'n*, 121 P.3d 843, 869 (Ariz. Ct. App. 2005).
[38] *See, e.g.*, *Schrage v. State Bd. of Elections*, 430 N.E.2d 483, 486-89 (Ill. 1981); *Preisler v. Doherty*, 284 S.W.2d 427, 435 (Mo. 1955).
[39] *See, e.g.*, *Wilson*, 823 P.2d at 553; *In re Reapportionment of Towns of Hartland, Windsor & W. Windsor*, 624 A.2d at 330.
[40] *See, e.g.*, *In re 2003 Legislative Apportionment of House of Representatives*, 827 A.2d 810, 814, 816-17 (Me. 2003); *Parella v. Montalbano*, 899 A.2d 1226, 1252 (R.I. 2006).
[41] *See, e.g.*, *Schneider v. Rockefeller*, 293 N.E.2d 67, 72 (N.Y. 1972); *In re Reapportionment of Towns of Hartland, Windsor & W. Windsor*, 624 A.2d at 330-31.
[42] *See, e.g.*, *Davenport v. Apportionment Comm'n*, 319 A.2d 718, 722 (N.J. 1974); *Schneider*, 293 N.E.2d at 72.
[43] *See, e.g.*, *In re 1983 Legislative Apportionment of House, Senate, & Congressional Dists.*, 469 A.2d 819, 831 (Me. 1983); *Matter of Legislative Districting of State*, 475 A.2d at 443.

- Whether the shape of the district is affected by the one-person, one-vote requirement, in light of uneven population distributions.[44]

- Whether the shape of the district is affected by non-compact minority districts.[45]

Because the considerations that influence compactness are multi-faceted and fact-intensive, courts tend to agree that mere visual inspection is ordinarily insufficient to determine compliance with a compactness standard,[46] and that an evaluation of compactness requires a factual setting.[47]

In addition to compactness, the second tier of standards requires that, where feasible, districts utilize existing political and geographical boundaries.[48] One principal purpose of a requirement to follow established boundaries is to aid voters in orienting themselves to the territory of their new districts.[49] An interpretation consistent with this policy would encourage the use of natural geographical features, such as bays, lakes, rivers, and other water areas, as well as commonly known geographical demarcations, such as interstate highways and, in urban areas, well-traveled thoroughfares. The term "political boundaries" refers, at a minimum, to the boundaries of cities and counties.[50] The Florida Constitution accords no preference to political over geographical boundaries.[51]

The Constitution recognizes that, in the creation of districts, it will often not be "feasible" to trace political and geographical boundaries.[52] District boundaries might depart from political and geographical boundaries to achieve objectives of superior importance, such as population equality and the protection of minorities, and many political subdivisions are not compact. Some local boundaries may be ill-suited to the achievement of effective and meaningful representation.

Public Outreach and Input

In the summer of 2011, the House and Senate initiated an extensive public outreach campaign. On May 6, 2011, the Senate Committee on Reapportionment and the House Redistricting Committee jointly announced the schedule for a statewide tour of 26 public hearings. The purpose of the hearings was to receive public comments to assist the Legislature in its creation of new redistricting plans. The schedule included stops in every region of the state, in rural and urban areas, and in all five counties subject to preclearance. The hearings were set primarily in

[44] *See, e.g., Acker v. Love*, 496 P.2d 75, 76 (Colo. 1972); *Preisler*, 528 S.W.2d at 426.
[45] *See, e.g., Jamerson v. Womack*, 423 S.E.2d 180, 185 (Va. 1992).
[46] *See, e.g., Matter of Legislative Districting of State*, 475 A.2d at 439; *Commonwealth ex rel. Specter v. Levin*, 293 A.2d 15, 23-24 (Pa. 1972).
[47] *See, e.g., State ex rel. Davis v. Ramacciotti*, 193 S.W.2d 617, 618 (Mo. 1946); *Opinion to the Governor*, 221 A.2d at 802, 804.
[48] Art. III, § 20(b), Fla. Const.
[49] *Legislative Redistricting Cases*, 629 A.2d 646, 665 (Md. 1993); *Matter of Legislative Districting of State*, 475 A.2d at 439, 444.
[50] The ballot summary of the constitutional amendment that created the new standards referred to "existing city, county and geographical boundaries." *See Advisory Opinion to Att'y Gen. re Standards for Establishing Legislative Dist. Boundaries*, 2 So. 3d 175, 179 (Fla. 2009).
[51] Art. III, § 20(b), (c), Fla. Const.
[52] Art. III, § 20(b), Fla. Const.

the mornings and evenings to allow a variety of participants to attend. Specific sites were chosen based on their availability and their accessibility to members of each community.

Prior to each hearing, committee staff invited a number of interested parties in the region to attend and participate. Invitations were sent to representatives of civic organizations, public interest groups, school boards, and county elections offices, as well as to civil rights advocates, county commissioners and administrators, local elected officials, and the chairs and executive committees of statewide political parties. In all, over 4,000 invitations were sent.

In addition to distributing individual invitations, committee staff purchased legal advertisements in local print newspapers for each hearing, including Spanish-language newspapers. The House Redistricting Committee also purchased advertisement space in newspapers and airtime on local radio stations to raise awareness about the hearings. Staff from both chambers also informed the public of the hearings through social media websites.

The impact of the statewide tour and public outreach is observable in multiple ways. During the tour, committee members received testimony from over 1,600 speakers. To obtain an accurate count of attendance, committee staff asked guests to fill out attendance cards. Although not all attendees complied, the total recorded attendance for all 26 hearings amounted to 4,787.

City	Date	Recorded Attendance	Speakers
Tallahassee	June 20	154	63
Pensacola	June 21	141	36
Fort Walton Beach	June 21	132	47
Panama City	June 22	110	36
Jacksonville	July 11	368	96
Saint Augustine	July 12	88	35
Daytona Beach	July 12	189	62
The Villages	July 13	114	55
Gainesville	July 13	227	71
Lakeland	July 25	143	46
Wauchula	July 26	34	13
Wesley Chapel	July 26	214	74
Orlando	July 27	621	153
Melbourne	July 28	198	78
Stuart	August 15	180	67
Boca Raton	August 16	237	93
Davie	August 16	263	83
Miami	August 17	146	59
South Miami	August 17	137	68
Key West	August 18	41	12
Tampa	August 29	206	92
Largo	August 30	161	66

City	Date	Recorded Attendance	Speakers
Sarasota	August 30	332	85
Naples	August 31	115	58
Lehigh Acres	August 31	191	69
Clewiston	September 1	45	20
TOTAL		**4,787**	**1,637**

Throughout the summer and at each hearing, legislators and staff encouraged members of the public to draw and submit their own redistricting plans through web applications created and made available on the internet by the House and Senate. At each hearing, staff from both chambers was available to demonstrate how members of the public could illustrate their ideas by means of the redistricting applications. In September 2011, the chairs of the House and Senate committees sent individual letters to more than fifty representatives of public-interest and voting-rights advocacy organizations to invite them to prepare and submit proposed redistricting plans.

As a result of these and other outreach efforts, the public submitted 157 proposed legislative and congressional redistricting plans between May 27 and November 1, 2011. Since then, 17 plans have been submitted by members of the public. This total represents a dramatic increase from the four plans submitted during the last decennial redistricting process.

Public Plans	Complete Plans	Partial Plans	Total Plans
House	18	24	42
Senate	28	18	46
Congressional	61	25	86
TOTAL	**107**	**67**	**174**

Records from the public hearings,[53] comments sent to the committee,[54] committee meetings,[55] as well as the maps, downloads, and statistics for each redistricting plan drawn by legislators, staff, or the public[56] have been made available on the Senate Redistricting website.

III. Effect of Proposed Changes:

Consistent with state and federal law, the committee substitute apportions the state into 27 single-member congressional districts. A statistical analysis is attached to this bill analysis.

The districts in the committee substitute have an overall range of one person. Twenty-two districts have populations of 696,344, while five districts have populations of 696,345.

The bill assigns to each proposed district a district number based on the benchmark district from which the proposed district receives most of its population.

[53] http://www.flsenate.gov/Session/Redistricting/Hearings
[54] http://www.flsenate.gov/Session/Redistricting/PublicComments
[55] http://www.flsenate.gov/Committees/Show/RE/
[56] http://www.flsenate.gov/Session/Redistricting/Plans

Where more than one proposed district receives most of its population from the same benchmark district, the proposed district with the larger population from the benchmark district inherits the benchmark district's number. The other district assumes its number from the next available benchmark district that is not taken by another proposed district.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Reapportionment on January 11, 2012:

The committee substitute is a product of public feedback received after initial publication of the committee bills on November 28, 2011, committee discussion that occurred at the meeting on December 6, 2011, and suggestions offered by Supervisors of Elections after a committee staff presentation at their business meeting in Orlando on December 10, 2011. The committee substitute:

- Follows city boundaries and decreases the numbers of times cities are split by districts,
- Follows geographic boundaries, including bays, rivers, major roadways, and other recognizable physical features, and
- Changes the boundary of District 13 to include coastal Charlotte County (west of Interstate 75), in addition to coastal Manatee and Sarasota Counties and the City of North Port. Changes the boundary of District 12 to include rural areas of in Manatee and Sarasota Counties (east of Interstate 75 and excluding the City of North Port), in addition to rural areas in Charlotte County.

B. Amendments:

None.